

irritation with Raflo's tendency to tell stories.

"They'd strum their hands on the table and dismiss him because it was all so whimsical, but he was so often proved true."

Raflo would say that the Democratic Party was sliding down the tube in Virginia, "and it did," Bennie said, recalling that Raflo kept telling the party it would have to do things differently if it were to succeed.

"He was always looking into the future, and had enormous experience. And he was often right."

Raflo was the son of Joseph Raflo and Fannie Bulitsky Raflo. He was predeceased also by his daughter Joe Raflo; son Philip Raflo; and brother Harry Raflo. He is survived by his wife Frances Atwell Raflo; sons Paul Raflo of Stevensville, MD, and Alan Raflo of Blacksburg; grandson John-Paul Raflo; and great-grandchildren Josephine, Luke, and Delaney. Funeral services were held at 11 a.m. Thursday at Congregation Sha'are Shalom in Leesburg, followed by interment at Union Cemetery. Memorial contributions may be made to be sent to Leesburg Kiwanis, PO Box 445, Leesburg, VA 20178, Attention Bob Wright; Leesburg Volunteer Fire Company, PO Box 70, Leesburg, VA 20178; or Capital Hospice, 209 Gibson St. NW, Suite 202, Leesburg, VA 20176.

THE INTRODUCTION OF THE AMERICAN DREAM ACT OF 2009

HON. HOWARD L. BERMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 26, 2009

Mr. BERMAN. Madam Speaker, I rise this afternoon to talk about the American Dream Act, a bill that I have introduced today with my long-time partners in this endeavor, Representatives LUCILLE ROYBAL-ALLARD and LINCOLN DIAZ-BALART. We are joined in our effort by a bipartisan group of dedicated original co-sponsors. I believe that all of us have come to this effort for the same reason—to keep our country from squandering the promise of thousands of young people who have been raised here, worked hard in school, and would like to pursue higher education or serve their country in the military. These students face tremendous obstacles in reaching their potential because, through no fault of their own, they exist in a legal limbo with no way to adjust their immigration status.

In America, we value every young person. We reward hard work and good moral character. We value the drive to continue one's education, and we don't penalize children for the misdeeds of their parents. But current federal law punishes many children for the decision that their parents made to bring them to this country. Now, when these young people finish high school, their choices are few: they can try to find work illegally in order to support themselves or they can hope to somehow continue their education while under a legal cloud. They consider themselves Americans because this country is the only home they've ever really known, but their lives are filled with uncertainty and their future is limited so long as they have no legal status.

This is a travesty. It means that their communities—the communities that they have grown up in and call home—will never fully reap the benefits of their abilities. We have set up obstacles to their success at every turn,

and our goal here today is to find a way to ensure that we don't waste their potential.

My own interest in this issue was intensified when a family near my district wrote to me asking for help for a young undocumented student. This young woman was brought to the United States by her mother when she was a small child. She attended public schools in California, where she was an honors student in high school, received awards for her outstanding community service, and graduated with a near perfect grade point average. When it came time for her to go to college, she found that she was ineligible not just for federal financial aid, but for in-state tuition as well. But this young woman was one of the rare undocumented students in this country fortunate enough to get help from a private source. She participated in a community mentoring program through which she met a couple who came to consider her a part of their family after working with her for many years. They couldn't bear to see this young woman give up her dreams simply because the federal government wanted to punish her for the decision her mother made to bring her to this country illegally. This young woman, with the help of her community and friends, was able to go to college in California and graduated with honors. She was then admitted to graduate school, but was unable to attend because the program to which she was admitted could not give her the tuition waiver it customarily offers to students of her caliber. This young woman was extraordinarily lucky to get the help she did in paying for her undergraduate education, but in the end, she was in the same place she was before she entered school. She was undocumented and had no reasonable means to adjust her status.

Shortly before I encountered this young woman's family, an outstanding young man in my district was brought to my attention because he wanted very much to get an appointment to one of the military academies and serve his country. He was a successful high school student and would have made an excellent appointment. But shortly into the process, it was determined that though he had lived in the United States for most of his life, he was undocumented and wouldn't have been able to accept the nomination. A few weeks after this occurred, I was at a dinner where I happened to be seated next to the Secretary of the Army. I related the situation to the Secretary over dinner, and we discussed what a waste it was to have to turn away a young man with such promise and dedication. A few days later I got a letter from the Secretary expressing interest in finding a way to let young people like my constituent who feel the call to serve their country, do so.

These are the young people who motivated me to introduce this bill, and there are students like them in nearly every congressional district in the country. Every year I see private bills that Members have introduced for constituents in this same situation because there is no other relief available to them in our broken immigration laws. I could have done the same for my constituents too, but I quickly came to realize that there was a much bigger issue to address. I would ask my colleagues who introduce these private bills to broaden their focus. Instead of seeking to help just one young person, we should fix the underlying problem.

It is almost a mantra in this country. Parents tell their children: work hard, get your edu-

cation, and you will succeed. For undocumented immigrant children, this turns out to be a cruel hoax. These young people are in many ways, first generation Americans. They were raised here by immigrant parents. They don't remember their parents' country of origin or feel any tie to it any more than first-generation American citizens do. When we first introduced this legislation, I frequently received letters from students who told me that they grew up believing they were U.S. citizens. They had no knowledge that they'd been brought here illegally until they applied for federal financial aid for college and they were turned down because their social security number doesn't match their name. Their parents never told them.

We are not the only ones who see the need to act. The plight of these students has been addressed by several state legislatures around the country. More than a dozen states have enacted laws to provide in-state tuition at public colleges and universities for students who have attended high school in their state. In the absence of federal action, they've done what they can to help students in their communities.

We've heard from guidance counselors and teachers who work with undocumented students and they tell us that once these students learn that they are, for all purposes, barred from attending college, their academic performance begins to slip, and their drive to excel devolves into disinterest. This is the time when dropout rates begin to soar, and it is the time that we should step in and ensure that these students reach their potential to become productive citizens of our country.

It makes no sense to me that we maintain a system that brings in thousands of highly-skilled foreign guestworkers each year to fill a gap in our domestic workforce, and at the same time do nothing to provide an opportunity to kids who have grown up here, gone to school here, and want to prepare themselves for these jobs or serve their country in the military. This is the illogical outcome of our current immigration laws that the Dream Act will fix. I encourage my colleagues to join us in this effort.

Finally, Madam Speaker, I want to add that the issues addressed in the American Dream Act are just a fraction of the problems in our immigration system. The Dream Act came about because our immigration laws are, and have been for some time, broken. It is very important that we pass this piece of legislation this year. But it is my fondest hope that we will put together a comprehensive immigration reform package that includes the Dream Act as it was introduced today, and it is my intention to work for and pass that comprehensive immigration reform package this year.

CRIMINAL CODE MODERNIZATION AND SIMPLIFICATION ACT OF 2009

HON. F. JAMES SENSENBRENNER, JR.

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 26, 2009

Mr. SENSENBRENNER. Madam Speaker, the Criminal Code Modernization and Simplification Act revises the criminal code to update, simplify and consolidate many of the criminal provisions in Title 18 of the United States Code. It has been over 50 years since

the criminal code was last revised. The existing criminal code is riddled with provisions that are either outdated or simply inconsistent with more recent modifications to reflect today's modern world. I introduced this Act in both the 109th and 110th Congresses. This new version incorporates criminal laws enacted during 2007 and 2008.

This measure is intended to continue the dialogue and process for rewriting the criminal code, with the hope that other Members, the Senate, the judiciary, the Justice Department, criminal law professors, and other interested professionals will provide input and seek to develop a more comprehensive re-write.

With the increasing federalization of local crimes, there is a need to review and revise Title 18 to ensure that such federalization is minimized and tailored to appropriate crimes where State and local prosecutions may not adequately serve the public interest. Federal prosecutions constitute only seven percent of the criminal prosecutions nationwide. We need to ensure that the federal role continues to be limited and that the State and local offenses are not subsumed within an ever-expanding criminal code.

Through the years, the criminal code has grown with more and more criminal provisions, some of which are antiquated or redundant, some of which are poorly drafted, some of which have not been used in the last 30 years, and some of which are unnecessary since the crime is already covered by existing criminal provisions.

This bill cuts over 1/3 of the existing criminal code; reorganizes the criminal code to make it more user-friendly; and consolidates criminal offenses from other titles so that title 18 includes all major criminal provisions (e.g. drug crimes in title 21, aviation offenses and hijacking in title 49).

To the extent possible, and for the most part, I applied a policy-neutral intent, meaning that changes were made to streamline the code in an effort to assist policymakers, practitioners (judges, prosecutors, probation officers) and other persons who rely on the code to implement criminal law enforcement and compliance. However, two general policy changes were made: (1) attempts and conspiracies to commit criminal offenses are generally punished in the same manner as the substantive offense unless specifically stated otherwise; and (2) criminal and civil forfeiture and restitution provisions were consolidated unless a more specific policy was adopted for a crime.

Creating a Uniform Set of Definitions for the Entire Title—In reviewing the code, there were instances where terms were defined differently. In most cases there was no evident policy basis for different definitions. To eliminate this problem, a common set of definitions was established in the first section of the revised code.

Revising the Intent Requirements—The Supreme Court has consistently criticized Congress for imprecise drafting of intent requirements for criminal offenses. In numerous occasions, improper drafting has led to confusion in the courts, requiring further modifications to clarify Congress' intent.

Courts and commentators alike have denounced the use of "willful" in statutes because of the word's inherent ambiguity. The term "willful" can have different meanings in different contexts and thus is a vague term

defying uniform definition. Therefore, because the Government has a duty to provide clear notice to the public regarding what behavior constitutes a crime, use of the "willful" language in statutes should be avoided.

The U.S. Supreme Court explained that the term "willful . . . is a word of many meanings, its construction often being influenced by its context." *Spies v. United States*, 317 U.S. 492, 497 (1943). See also *United States v. Murdock*, 290 U.S. 389, 395 (1933) ("Aid in arriving at the meaning of the word 'willfully' may be afforded by the context in which it is used."). The looseness of the definition is demonstrated in the many different interpretations of the word "willful" in federal statutes.

Courts have described "willful" as meaning a high degree of culpability, such as a bad or evil motive. E.g., *United States v. Harris*, 185 F.3d 999, 1006 (9th Cir. 1999) ("[T]he act to be criminal must be willful, which means an act done with a fraudulent intent or a bad purpose or an evil motive."). But cf., e.g., *Nabob Oil Co. v. United States*, 190 F.2d 478, 480 (10th Cir. 1951) (holding that "such an evil purpose of criminal intent need not exist" for a "willful" violation). The term can mean that a person must have actual knowledge that his actions were prohibited by the statute. E.g., *Ratzlaf v. United States*, 510 U.S. 135, 141–42 (1994) (interpreting "willful" to require "both 'knowledge of the reporting requirement' and a 'specific intent to commit the crime,' i.e., 'a purpose to disobey the law.'").

Courts and commentators have decried the confusion that follows use of the word "willful" in statutes. The lower courts repeatedly cite the fluctuating meaning of the term "willfully," which has "defied any consistent interpretation by the courts." *United States v. Granda*, 565 F.2d 922, 924 (5th Cir. 1978). Judge Learned Hand criticized use of the term "willful" in statutes: "It's an awful word! It is one of the most troublesome words in a statute that I know. If I were to have the index purged, 'willful' would lead all the rest in spite of its being at the end of the alphabet." Model Penal Code and Commentaries, §2.02, at 249 n.47 (Official Draft and Revised Comments 1985) (citing A.L.I. Proc. 160 (1955)). Indeed, the drafters of the Model Penal Code, for example, deliberately excluded the term "willfully" in the definition of crimes, stating that the term "is unusually ambiguous standing alone." Model Penal Code §2.02 explanatory note at 228 (Official Draft and Revised Comments 2005).

The revised criminal code employs a straight-forward approach—where possible, the term "knowingly" is used to define the requisite intent for every crime, except for those criminal offenses that require some additional, and more specific, intent. Each offense starts with "knowingly" and then adds, if necessary, some additional intent requirement (e.g. specific intent crime).

The term "knowingly," means that the act was done voluntarily and intentionally and not because of mistake or accident. It would be incorrect to suggest that the term means that the actor must realize that the act was wrongful. See e.g., *Bryan v. United States*, 524 U.S. 184 (1998), the Court explained: [T]he term "knowingly" does not necessarily have any reference to a culpable state of mind or to knowledge of the law. As Justice Jackson correctly observed, "the knowledge requisite to knowing violation of a statute is factual knowledge as distinguished from knowledge of the

law;" *United States v. Udofot*, 711 F.2d 831, 835–37 (8th Cir. 1983); *United States v. Gravenmeier*, 121 F.3d 526, 529–30 (9th Cir. 1997); *United States v. Tracy*, 36 F.3d 187, 194–95 (1st Cir. 1994), cert. denied, 115 S. Ct. 1717 (1995).

Under the doctrine of "willful blindness," a defendant may have knowledge of a fact if the defendant deliberately closed his eyes to what would otherwise have been obvious to him. *United States v. Hauert*, 40 F.3d 197, 203 (7th Cir. 1994), cert. denied, 115 S.Ct. 1822 (1995) (ruling that the older "ostrich" instruction is not error, but not preferred); *United States v. Ramsey*, 785 F.2d 184, 190 (7th Cir.), cert. denied, 476 U.S. 1186 (1986); *United States v. Arambasich*, 597 F.2d 609, 612 (7th Cir. 1979); *United States v. Gabriel*, 597 F.2d 95, 100 (7th Cir.), cert. denied, 444 U.S. 858 (1979). *United States v. Dockter*, 58 F.3d 1284 (8th Cir. 1995).

Eliminated Criminal Offenses that Have Not Been Used in Last 30 Years or Are Subsumed by Other Criminal Offenses—As described below and for each section, the revised code eliminated sections that had not been used by the Justice Department. Even in the absence of any significant use, some offenses were kept even if they were not used but for policy reasons need to be maintained to deter the commission of the crime (e.g. Assassination of a Supreme Court Justice).

Also, in reviewing the existing code, there were many specific crimes that were already covered by more general provisions. Typically, the more specific provisions were added to the code after the general provision was enacted, and there was no substantive difference in the newer and more specific offense.

This project required significant resources and assistance from the Legislative Counsel's Office, and in particular, Doug Bellis, the Deputy Counsel of that Office, and Caroline Lynch, Chief Republican Counsel, Subcommittee on Crime, Terrorism and Homeland Security, both of whom devoted substantial efforts to preparing this bill and should be commended for their extraordinary efforts.

HONORING KARIN BROWN

HON. MARIO DIAZ-BALART

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 26, 2009

Mr. MARIO DIAZ-BALART of Florida. Madam Speaker, I rise today to honor a very special lady from the State of Florida, Karin Brown. She has dedicated her life to being an exceptional educator, community activist and fighter for Florida's children.

Karin currently serves as the President of the Florida Parent Teacher Association, an organization to which she has dedicated many years of service at both the local and state level. A wife to Bill Brown for nearly 40 years, mother of five and grandmother of three, she has made it her life mission to create a healthy relationship between students, parents and teachers and ensuring a stable environment in the classroom and at home for children. Her civic involvement includes serving on various community advisory boards, governing boards, task forces and as a liaison to organizations all focusing on child development, education and well being.